

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9413 of 1999

with

SPECIAL CIVIL APPLICATION No 9415 of 1999

with

SPECIAL CIVIL APPLICATION No 9416 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GANESH SHANKARBHAI JOSHI & OTHERS

Versus

COMMISSIONER OF POLICE,

Appearance:

MR SATISH R PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

COMMON ORAL JUDGEMENT

#. As these petitions relate to detenues who have been detained in connection with the same offences and same incidents, at the request of learned advocates for parties, they are disposed off by this common judgment.

#. The petitioners have been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act, dated 26th October, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration two offences registered against the petitioner in Spl.C.A. No. 9413/99 and three offences registered against the petitioner in Spl.C.A. Nos. 9415/99 and 9416/99. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on 14th October, 3, 1999 and 8th October, 1999 and came to conclusion that the petitioners are "dangerous persons", that their activities are detrimental to public order, that fear expressed by the witnesses qua the petitioners was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioners have challenged this order of detention on various counts. However, learned advocate for the petitioners has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on 23rd October, 1999 and 24th October, 1999, which were verified by the detaining authority on 26th October, 1999 and the order of detention is passed on October 26, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioners therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas

Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2)
GLR 1659, these petitions may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the statements having been made on October 26, 1999 and the order having been passed on the same day i.e. on October 26, 1999.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detainee of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant cases, as well and the petitions deserve to be allowed on this count alone.

#. In view of the above discussion, all three petitions are allowed. The impugned orders of detention dated October 26, 1999 passed against the detainees are hereby quashed. The detainees - Ganesh Shankarbhai Joshi, Ganesh Baburav Joshi and Gulabrao Kundiram Joshi, are ordered to be set at liberty forthwith, if not required in any other matters. Rule is made absolute in all three petitions

with no orders as to costs.

[A.L.DAVE, J.]

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